

**BEFORE THE  
COMMISSION ON LANDLORD TENANT AFFAIRS  
FOR MONTGOMERY COUNTY, MARYLAND**

Flora and Linje Nankhuni

Complainant

V.

Laura Reiff

Respondent

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Case No. 32755

Investigator: Maureen Harzinski

Rental Facility: 7736 Goodfellow Way, Derwood, MD (Rental License 63716)

**DECISION AND ORDER**

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (“Commission”), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended (“County Code”), and the Commission having considered the testimony and evidence of record, it is therefore, this 14<sup>th</sup> day of February 2012, found, determined, and ordered, as follows:

**BACKGROUND**

On September 1, 2011, Linje Nankhuni and Flora Nankhuni (“Complainants”), former tenants at 7736 Goodfellow Way, Derwood, Maryland (“Property”), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs in the Department of Housing and Community Affairs (“Department”), in which they alleged that Laura Foote Reiff, aka Laura Diane Kozero (“Respondent”), owner of the Property: (1) assessed unjust charges against their security deposit in violation of Section 8-203, *Security deposits*, of the Real Property Article, Annotated Code of Maryland, as amended (“Real Property Article”); (2) failed to send them by first-class mail, an itemized list of damages, together with a statement of the costs actually incurred to repair that damage, within the 45 days after the termination of the tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article; and (3) failed to incur actual costs for the charges which Respondent assessed against the security deposit in violation of Section 8-203 (g)(1) of the Real Property Article.

The Respondent contended that: (1) she sent the Complainants an itemized list of damages by email within 45 days after the termination of the tenancy; (2) the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy; and (3) that she did incur actual costs for the charges which were assessed against the security deposit.

The Complainants are seeking an Order from the Commission for the Respondent to refund \$1034.25 (\$975.00 of their security deposit plus interest in the amount of \$59.25) and a penalty of up to 3 times the unreasonably withheld amount.

After determining that Case No. 32755 was not susceptible to conciliation, the Department referred Case No. 32755 to the Commission for its review, and on December 6, 2011, the Commission voted to hold a public hearing on January 17, 2012. The public hearing in the matter of Flora and Linje Nankhuni v. Laura Reiff relative to Case No. 32755 commenced on January 17, 2012, and concluded on that date.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainants, Flora and Linje Nankhuni, Complainants' witnesses, Paul Mulani and Irene Nankhuni, the Respondent, Laura Reiff-Kozero, and Respondent's witness, Jeffery Kozero.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission entered, without objection, into evidence the following exhibits offered by the Complainants: (1) copies of two Wal-Mart receipts dated May 28, 2011, and May 30, 2011, identified as Complainants' Exhibit No.1; (2) a Walmart.com printout of a Bissell PowerSteamer, identified as Complainants' Exhibit No.2; (3) 6 photographs of the interior during a baby shower hosted by the Complainants at the Property, identified as Complainants' Exhibit No. 3; (4) a printout of three emails, identified as Complainants' Exhibit No. 4; (5) four photographs of the Property, identified as Complainants' Exhibit No. 5; (6) a mapquest printout of a map and directions from the Property to the Complainants' current address, identified as Complainants' Exhibit No. 6; (7) a letter from Realty Group Property Management dated January 13, 2012, with attachments, identified as Complainants' Exhibit No. 7; (8) a letter from Linda Semu dated January 12, 2012, identified as Complainants' Exhibit No. 8; (9) a letter from Irene Jenner, dated January 15, 2012, identified as Complainants' Exhibit No. 9; (10) a letter written by John and Florence Kilungya dated January 15, 2012, a letter written by Mr. and Mr. Muthiani dated January 15, 2012, and a letter from Ms. Magdalene Naya dated January 15, 2012, identified as Complainants' Exhibit 10; (11) copies of three cancelled checks (Check Nos. 1305, 1288, 1297), identified as Complainants' Exhibit No. 11; (12) two photographs of a coffee table, identified as Complainants' Exhibit No. 12. The Commission entered, without objection, into evidence the following exhibits offered by the Respondent: (1) five copies of photographs of the Property, identified as Respondent's Exhibit No. 1; (2) a copy of a credit card statement, and (3) WSSC bills for the Property, identified as Respondent's Exhibit No. 2.

The Commission kept the record open for seven calendar days, until January 25, 2012, to provide the Respondent with additional time to submit proof of payment for work performed at the Property. On January 23, 2012, the Department received, via hand delivery, from the Respondent, the following: (1) a letter from the Respondent dated January 23, 2012, indicating the contents of the submission, identified as Respondent's Exhibit No. 3; (2) copies of pictures of the Property prior to rental, identified as Respondent's Exhibit No. 4; (3) a copy of Respondent's Citi Platinum Select statement showing a payment made on June 28, 2011, for Stanley Steemer, in the amount of \$357.00, identified as Respondent's Exhibit No. 5; (4) a copy of Respondent's

Citi Platinum Select statement showing a payment made on September 2, 2011, to Radius Plumbing in the amount of \$7000.00, identified as Respondent's Exhibit No. 6; (5) a letter from James Hilderbrand, Principal, Radius Group, LLC, with attachments concerning the credit card payment to Radius Plumbing, identified as Respondent's Exhibit No. 7; (6) a letter from the Park Overlook Homeowners Association dated October 22, 2011, identified as Respondent's Exhibit No. 8.

### **FINDINGS OF FACT**

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On May 28, 2010, the Complainants and Respondent signed a one year lease agreement ("Lease") for the rental of the Property, which commenced on June 19, 2010, and was due to expire on June 30, 2011, for a monthly rent of \$1975.00.

2. The Complainants paid Respondent a security deposit in the amount of \$1975.00, the receipt for which is included in the Lease.

3. On April 14, 2011, the Respondent sent via first class mail and email to the Complainants, a notice to vacate which stated that the Complainants were to vacate on or before June 30, 2011.

4. The Complainants and the Respondent agreed that the Complainants could vacate on or before June 25, 2011, and would be responsible for the pro-rata rent for the month of June in the amount of \$1645.00. The Complainants and Respondent also agreed that \$1,000.00 of the Complainant's security deposit would be applied to June 2011 rent, leaving an agreed upon balance of \$645.00.

5. On June 10, 2011, the Complainants paid \$645.00 for June 2011 rent.

6. The Complainants vacated the Property on June 25, 2011.

7. The Commission finds that on June 29, 2011, the Respondent sent an e-mail to the Complainants describing damages assessed against their security deposit.

8. The Commission finds that the Respondent did not send an itemized list of damages by first class mail to the Complainants within 45 days after the termination of Complainants' tenancy.

9. The Commission finds that it does not need to decide the issues of whether there were damages in excess of ordinary wear and tear and whether the landlord actually incurred costs because the Respondent failed to send an itemized list of damages by first class mail to the Complainants within 45 days after the termination of the Complainants' tenancy. In accordance with the Real Property Article, the Commission finds that the landlord has forfeited the right to withhold any part of the security deposit for damages, and therefore, any evidence presented regarding damages and costs is not germane to the Commission's decision in this case.

## **CONCLUSIONS OF LAW**

Accordingly, based upon a fair consideration of the testimony and relevant evidence contained in the record, the Commission concludes:

1. The Respondent failed to send an itemized list of damages to the Complainants by first class mail within 45 days after the termination of their tenancy. Section 8-203(g)(1) and (2) of the Real Property Article states:

(1) If any portion of the security deposit is withheld, the landlord shall present by first- class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred; and, (2) If the landlord fails to comply with this requirement, the landlord forfeits the right to withhold any part of the security deposit for damages.

Therefore, pursuant to Sections 8-203(g)(1) and (2) of the Real Property Article, the Respondent has forfeited her right to withhold any portion of the Complainant's security deposit for damages.

2. The Commission concludes that the Respondent's failure to handle and dispose of the Complainant's security deposit in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," of the Real Property Article, has caused a defective tenancy.

3. However, in order for the Commission to award a penalty, as requested by the Complainants, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Landlord's conduct in wrongfully withholding all or part of the Complainants' security deposit and whether or not the Respondent acted in bad faith or has a prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondent's conduct did not rise to the level of bad faith or egregiousness necessary to award a penalty, and therefore, Complainants' request for such an award is denied.

## **ORDER**

In view of the foregoing, the Commission hereby orders that the Respondent must pay the Complainants **\$1,034.25**, which sum represents the remaining balance of the Complainants' security deposit in the amount of \$975.00 plus accrued interest of \$59.25.

Commissioner Deanna Stewart, Commissioner David Greenstein, and Commissioner Galia Steinbach, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent Laura Reiff must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4<sup>th</sup> Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Flora and Linje Nankhuni, in the amount of **\$1,034.25**.

The Respondent is hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of Class A civil citations and civil fines of \$500.00 each, should the Commission determine that the Respondent has not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, she must post a bond with the Circuit Court in the amount of the award (**\$1,034.25**) if a stay of enforcement of this Order is sought.

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Galia Steinbach , Panel Chairperson  
Commission on Landlord-Tenant Affairs